

~~SECRET~~ *Secret*

TO ~~XXXXXXXXXX~~ LLM

STATINTL

FROM:

DATE 4 June 1975

SUBJECT:

SUSPENSE DATE \_\_\_\_\_

Covering letter to Levi for electronics surveillance memo.

NOTE: We discussed it might be worthwhile to send the electronics surveillance memo to the Department of Justice as they are preparing to testify before McClellan's committee on 24 June. This is a draft of a covering letter. If we're going to move on this, we have to get this out in the next week or two.

COORDINATED WITH (list names as well as offices):

_____ Name	_____ Office
_____ Name	_____ Office
_____ Name	_____ Office

ACTION REQUIRED BY GLC: Please review draft.

OGC Has Reviewed

Honorable Edward H. Levi, Attorney General  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Levi:

As you may know over a dozen bills have been introduced in Congress to date which restrict electronic surveillance conducted on national security grounds. The major bills in this area, such as S. 743, H. R. 141 and H. R. 214, would repeal 18 USC 2511(3) and impose judicial administration of a "probable causes" standard over all "national security" communication interception, including foreign intelligence-gathering surveillance. This approach poses



I understand the Department of Justice is scheduled to testify on S. 743 before the Senate Judiciary Subcommittee on Criminal Laws and Procedures, and may appear before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice which is holding hearings on electronic surveillance. In testifying on electronic surveillance legislation in the past, the Department has represented the interests of the foreign intelligence community. Former Attorney General Saxbe touched on the special problems which "probable cause" standards and warrant requirements would pose for foreign positive intelligence collection when he testified before the Senate Judiciary Subcommittee

to commend the Department's recognition of these factors and request that they again be emphasized in testimony this Congress.

In my view, one of the most pernicious aspects of this legislation is its treatment of "national security" cases under a single rubric--the confounding of foreign intelligence collection with other national security activities, such as the discovery and prosecution of criminal acts and conspiracies. Whatever can be said of the wisdom of applying judicial administration of a "probable cause" standard to every case of the latter, its application to foreign intelligence collection would be altogether inappropriate. It would restrict domestic and transnational

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purposes to situations involving an anticipated, demonstrable, and direct threat to the national defense. By definition this would preclude collection of all but early warning intelligence, i.e. information which indicates a potential attack on the United States, and even in these cases there would be no assurance that a nascent threat was anticipated.

I am also concerned over the possible ramifications which this legislation could have for [REDACTED]  
Repeal of 18 USC 2511(3) coupled with articulation of "probable cause"

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standards for foreign intelligence-gathering activities could ultimately result in subjecting  foreign intelligence surveillances to the proposed probable causes standard as a test of the "reasonableness" required by Fourth Amendment protection.

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For your consideration, I have attached a memorandum on pending electronic surveillance legislation prepared by this Agency's Office of Legislative Counsel.